

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

S.A.O. No. 4 of 1997

Date of decision December 6, 2006

Rajender Singh and others

.....Appellants

Versus

Ram Dhari and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE VINEY MITTAL

Present:- Sh. Kulvir Narwal, Advocate
for the appellants.

Sh. Rameshwar Malik, Advocate
for the respondents.

Viney Mittal, J (Oral)

The defendants are the appellants before this court. They have challenged the order dated December 13, 1996 passed by learned Additional District Judge, Rohtak whereby the judgment of the trial Court has been set aside but the matter has been remanded back to the trial Court for fresh decision after re-framing the issues.

The plaintiff, Ram Dhari, had filed suit for possession. The said suit was decreed by the learned trial Judge vide judgment and decree dated January 20, 1993. Against the aforesaid judgment and decree, the defendants filed an appeal. The learned Appellate Court has held that the issues framed by the trial Court did not reflect the pleas of the parties and even burden of proof of some of the issues had wrongly been put. In these circumstances, without commenting upon the merits of the pleas raised by the parties, the learned Appellate Court has chosen to re-frame and recast the issues and framed ten issues. On re-framing of the issues the

judgment and decree of the trial Court have been set aside and the case has been remanded back to the trial Court for fresh decision on all the issues.

It is in these circumstances that the defendants are before this Court in the present appeal.

I have heard Sh. Kulvir Narwal, learned counsel for the appellants and Sh. Rameshwar Malik, learned counsel for the respondents and with their assistance have also gone through the record of the case.

It is well settled that when the parties have led their evidence and have understood the pleas raised by each other, then the mere language of the issues loses any significance. The burden of proof also loses relevance after the parties have led evidence. The aforesaid principles have been completely ignored by the Appellate Court. In the proceedings before the trial Court, the parties had led their evidence. They had completely understood the pleas put-forth by each one of them. The evidence had been led on that understanding. The trial Court had decided the suit. In these circumstances, it was wholly unnecessary, and not even justified, to set aside the judgment and decree of the trial Court merely on account of the fact that the issues framed by the trial Court were not happily worded or the burden of proof was not appropriately put.

Consequently, the present appeal is allowed. The order dated December 13, 1996 passed by the Additional District Judge, Rohtak is set aside. The appeal filed by the defendants before the Appellate Court is restored back to its original number. The Appellate Court is directed to decide the appeal in accordance with law.

The parties through their learned counsel are directed to appear before the Additional District Judge, Rohtak on January 18, 2007.

A copy of the order be given dasti on payment of usual charges.

(VINEY MITTAL)
JUDGE

December 6, 2006
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